

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 40

Introduced by Flood, 19.

Read first time January 8, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to amend sections 25-1144
2 and 27-1201, Reissue Revised Statutes of Nebraska;
3 to correct internal references to certain statutory
4 provisions; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-1144, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-1144 The application ~~must~~ for a new trial shall be
4 by motion, upon written grounds, filed at the time of making
5 the motion. It shall be sufficient, however, in assigning the
6 grounds of the motion to assign the same in the language of the
7 statute and without further or other particularity. The causes
8 enumerated in subdivisions (2), (3), and (7) of section 25-1142
9 ~~subdivisions (2), (3) and (7), of this code must~~ shall be sustained
10 by affidavits showing their truth, and may be controverted by
11 affidavits.

12 Sec. 2. Section 27-1201, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 27-1201 (1) In any civil action brought by an alleged
15 victim of an unanticipated outcome of medical care, or in any
16 arbitration proceeding related to such civil action, any and all
17 statements, affirmations, gestures, or conduct expressing apology,
18 sympathy, commiseration, condolence, compassion, or a general sense
19 of benevolence which are made by a health care provider or an
20 employee of a health care provider to the alleged victim, a
21 relative of the alleged victim, or a representative of the alleged
22 victim and which relate to the discomfort, pain, suffering, injury,
23 or death of the alleged victim as a result of the unanticipated
24 outcome of medical care shall be inadmissible as evidence of an
25 admission of liability or as evidence of an admission against

1 interest. A statement of fault which is otherwise admissible and
2 is part of or in addition to any such communication shall be
3 admissible.

4 (2) For purposes of this section, unless the context
5 otherwise requires:

6 (a) Health care provider means any person licensed or
7 certified by the State of Nebraska to deliver health care under
8 the Uniform ~~Licensing Law~~ Credentialing Act and any health care
9 facility licensed under the Health Care Facility Licensure Act.
10 Health care provider includes any professional corporation or other
11 professional entity comprised of such health care providers;

12 (b) Relative means a patient's spouse, parent,
13 grandparent, stepfather, stepmother, child, grandchild, brother,
14 sister, stepbrother, stepsister, half brother, half sister, or
15 spouse's parents. Relative includes persons related to the patient
16 through adoptive relationships. Relative also includes any person
17 who has a family-type relationship with the patient;

18 (c) Representative means a legal guardian, attorney,
19 person designated to make health care decisions on behalf of a
20 patient under a power of attorney, or any person recognized in law
21 or custom as a patient's agent; and

22 (d) Unanticipated outcome means the outcome of a medical
23 treatment or procedure that differs from the expected result.

24 Sec. 3. Original sections 25-1144 and 27-1201, Reissue
25 Revised Statutes of Nebraska, are repealed.